

# EXHIBIT 3

Oliver Simmonds Deposition

In The Matter Of:  
***Glover vs. City Of Atlanta***

Deposition Of:  
***Oliver Simmonds***

Taken On:  
7/13/2022

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<p>1 interactions with the mayor?</p> <p>2     <b>A. Say that again.</b></p> <p>3     Q. Did you have regular interactions with the</p> <p>4     mayor?</p> <p>5     <b>A. Yes.</b></p> <p>6     Q. Did you talk to her -- was it -- who --</p> <p>7     let's back up.</p> <p>8         Who was the mayor while you were in the EPU?</p> <p>9     <b>A. Keisha Lance Bottoms.</b></p> <p>10    Q. Was that for your entire six years in the</p> <p>11    EPU?</p> <p>12    <b>A. No. The first one was Kasim Reed.</b></p> <p>13    Q. Okay. Did the mayor ever give you</p> <p>14    instructions while you were on the job?</p> <p>15    <b>A. No.</b></p> <p>16    Q. Okay. Let's talk about the day of the</p> <p>17    incident. When did you start work on January 15,</p> <p>18    2019?</p> <p>19    <b>A. What time?</b></p> <p>20    Q. Yes.</p> <p>21    <b>A. 2 p.m.</b></p> <p>22    Q. Walk me through your shift. What was going</p> <p>23    on that day?</p> <p>24    <b>A. The mayor wasn't in office, and we were just</b></p> <p>25    at the office.</p>	<p>Page 13</p> <p>1     <b>machine. I start pumping the gas.</b></p> <p>2         <b>After I finished pumping the gas, closed it</b></p> <p>3         <b>back. Go to enter the vehicle. Open the door.</b></p> <p>4         <b>Someone was -- somebody was inside, inside the car.</b></p> <p>5         <b>When I went to enter, the person start pushing me out</b></p> <p>6         <b>of the car, and a little struggle ensued. And then</b></p> <p>7         <b>they pull off.</b></p> <p>8         <b>The door of the thing -- when they pull out,</b></p> <p>9         <b>the door was still open. So I held onto the door.</b></p> <p>10         <b>And I realized it was about to make a U-turn on</b></p> <p>11         <b>Whitehall -- to speed up to go down Whitehall Avenue</b></p> <p>12         <b>into Zone 3.</b></p> <p>13         <b>So at that point, the door closes. I'm not</b></p> <p>14         <b>sure how it closed. And part of my jacket was stuck</b></p> <p>15         <b>to the car. When I realized that he was about to turn</b></p> <p>16         <b>to go on Whitehall and to increase speed, I drew my</b></p> <p>17         <b>pistol and I fired while tugging onto my jacket. Then</b></p> <p>18         <b>I got released from the car.</b></p> <p>19         <b>My -- in the process at some point the</b></p> <p>20         <b>vehicle run over my foot. So when I -- when I got</b></p> <p>21         <b>released from the car, I fell onto the side of the</b></p> <p>22         <b>street trying to call -- get on my radio, trying to</b></p> <p>23         <b>call dispatch to tell them exactly what happened.</b></p> <p>24         <b>Then the car apparently crashes.</b></p> <p>25         Q. Okay. Let me ask a few follow-ups on this.</p>
<p>1     Q. When did your shift end?</p> <p>2     <b>A. It was supposed to be at 10:00.</b></p> <p>3     Q. What time did you leave city hall?</p> <p>4     <b>A. I can't recall. Sometime after I got there.</b></p> <p>5     <b>I can't recall.</b></p> <p>6     Q. Where did you go?</p> <p>7     <b>A. I go to the T.J. Maxx on Howell Mill Road.</b></p> <p>8     Q. Where did you go after the T.J. Maxx?</p> <p>9     <b>A. To a gas station.</b></p> <p>10    Q. And that's the Shell station at Whitehall</p> <p>11    and McDaniel?</p> <p>12    <b>A. Yes, sir.</b></p> <p>13    Q. Okay. Were you familiar with that area?</p> <p>14    <b>A. Not really. Just driving past there. Not</b></p> <p>15    <b>really familiar.</b></p> <p>16    Q. Had you been to that gas station before?</p> <p>17    <b>A. I can't recall.</b></p> <p>18    Q. What time did you get there?</p> <p>19    <b>A. I can't recall also.</b></p> <p>20    Q. Describe for me in as much detail as you can</p> <p>21    what happened at this gas station.</p> <p>22    <b>A. Okay. Got out of the car to pump gas.</b></p> <p>23    <b>Retrieved the -- when I go open the -- we use gas</b></p> <p>24    <b>cards. So go retrieve the gas card from the -- from</b></p> <p>25    <b>the -- from the car, place it in the -- in the</b></p>	<p>Page 14</p> <p>1     How long was your jacket stuck in the car door?</p> <p>2     <b>A. I don't know. It happened so fast. I</b></p> <p>3     <b>wasn't -- I can't tell.</b></p> <p>4     Q. Roughly, how much distance did you and the</p> <p>5     car cover while your jacket was stuck in the door?</p> <p>6     <b>A. I don't know.</b></p> <p>7     Q. When you were pulling on the door, did you</p> <p>8     step into the car?</p> <p>9     <b>A. At the -- at the -- at the pump? I tried to</b></p> <p>10    <b>step in the car at the pump.</b></p> <p>11    Q. And did you grab the steering wheel when you</p> <p>12    reached into the car?</p> <p>13    <b>A. Yes.</b></p> <p>14    Q. From the time your -- you realized that your</p> <p>15    jacket was stuck in the door, how much time passed</p> <p>16    before you fired your gun?</p> <p>17    <b>A. As I said, I can't recall. The time go by</b></p> <p>18    <b>fast. It seemed like an eternity, but I can't put a</b></p> <p>19    <b>time on it. I don't know.</b></p> <p>20    Q. Can you say was it, you know, 30 seconds or</p> <p>21    2 seconds?</p> <p>22    MS. BENSON: Object to form. Asked and</p> <p>23    answered.</p> <p>24    <b>A. I don't know.</b></p> <p>25</p>

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<sup>1</sup> BY MR. FREDRICKSON:		<sup>1</sup> A. No.	
<sup>2</sup> Q. Where exactly were you when you fired?		<sup>2</sup> MR. FREDRICKSON: Let's mark this Exhibit 1,	
<sup>3</sup> A. In terms of -- I was outside the car.		<sup>3</sup> if we can. Or I'm happy to if you want.	
<sup>4</sup> Q. Were you on the gas station property?		<sup>4</sup> (Exhibit 1 marked.)	
<sup>5</sup> A. No. I don't -- I don't know.		<sup>5</sup> BY MR. FREDRICKSON:	
<sup>6</sup> Q. Where was the --		<sup>6</sup> Q. Okay. Officer Simmonds, I'm going to hand	
<sup>7</sup> A. But the --		<sup>7</sup> you what we just marked Exhibit 1. Are you familiar	
<sup>8</sup> Q. -- car?		<sup>8</sup> with the APD's policies regarding use of force?	
<sup>9</sup> A. -- car -- the car was driving. So as soon		<sup>9</sup> A. Yes.	
<sup>10</sup> as it was in the process of making a turn to go down		<sup>10</sup> Q. Are you familiar with this particular	
<sup>11</sup> Whitehall Avenue.		<sup>11</sup> document?	
<sup>12</sup> Q. So the car was in the process of making a		<sup>12</sup> A. Yes.	
<sup>13</sup> U-turn when you fired?		<sup>13</sup> Q. What is it?	
<sup>14</sup> A. Yes.		<sup>14</sup> A. The SOP on use of force.	
<sup>15</sup> Q. So it was not yet on Whitehall Avenue?		<sup>15</sup> Q. Did you fully comply with these policies	
<sup>16</sup> A. I'm not sure.		<sup>16</sup> when you shot D'Ettrick Griffin?	
<sup>17</sup> Q. Which way was the car facing?		<sup>17</sup> A. Yes.	
<sup>18</sup> A. When I shot?		<sup>18</sup> Q. Did you violate any APD policy in any way	
<sup>19</sup> Q. Yes.		<sup>19</sup> when you shot D'Ettrick Griffin?	
<sup>20</sup> A. It was turning. So when I parked, the car		<sup>20</sup> A. No.	
<sup>21</sup> was facing towards the city of Atlanta. So it was		<sup>21</sup> Q. When D'Ettrick started to drive away and you	
<sup>22</sup> going towards the opposite direction.		<sup>22</sup> grabbed the door handle, what were you trying to	
<sup>23</sup> Q. Was it -- I understand it was in the process		<sup>23</sup> accomplish?	
<sup>24</sup> of turning, but at the time that you fired, was it		<sup>24</sup> A. I was trying to retrieve possession of the	
<sup>25</sup> perpendicular to Whitehall or was it on Whitehall		<sup>25</sup> car.	
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<sup>1</sup> parallel with the street?		<sup>1</sup> Q. I'm sorry. Say that again.	
<sup>2</sup> A. It wasn't parallel. It was -- it was making		<sup>2</sup> A. I was trying to retrieve possession of the	
<sup>3</sup> a turn; so it couldn't be parallel.		<sup>3</sup> car.	
<sup>4</sup> Q. Why did you determine it was necessary to		<sup>4</sup> Q. What do you mean by that?	
<sup>5</sup> fire your gun?		<sup>5</sup> A. Get the car back.	
<sup>6</sup> A. I feared for my life or severely injured.		<sup>6</sup> Q. When you grabbed the steering wheel of the	
<sup>7</sup> Q. And why did you fear for your life?		<sup>7</sup> car, why did you do that?	
<sup>8</sup> A. Because I was stuck to the car and it was in		<sup>8</sup> A. Because I didn't know anyone was in the car.	
<sup>9</sup> motion and it was about to speed up.		<sup>9</sup> I was -- I was about to go inside the car.	
<sup>10</sup> Q. Where did you aim?		<sup>10</sup> Q. At the time that you grabbed the steering	
<sup>11</sup> A. I didn't get a chance to aim. I just pulled		<sup>11</sup> wheel of the car, you didn't know that anyone else was	
<sup>12</sup> my gun and fired inside the car to stop him.		<sup>12</sup> in there?	
<sup>13</sup> Q. When you fired, were you holding the gun in		<sup>13</sup> A. No.	
<sup>14</sup> both hands?		<sup>14</sup> Q. Okay. At what point did you realize someone	
<sup>15</sup> A. No.		<sup>15</sup> else was in the car?	
<sup>16</sup> Q. Which hand were you holding it in?		<sup>16</sup> A. When he started shouting.	
<sup>17</sup> A. My right hand.		<sup>17</sup> Q. What did he say to you?	
<sup>18</sup> Q. You're right-handed?		<sup>18</sup> A. I can't -- I can't recall.	
<sup>19</sup> A. Yes.		<sup>19</sup> Q. Did you say anything to him?	
<sup>20</sup> Q. When you got out of the car to start pumping		<sup>20</sup> A. No.	
<sup>21</sup> gas, did you leave the car unlocked?		<sup>21</sup> Q. Did you see D'Ettrick's hands on the	
<sup>22</sup> A. Yes.		<sup>22</sup> steering wheel?	
<sup>23</sup> Q. Did you leave the car running?		<sup>23</sup> A. I think -- the car was dark, but he was --	
<sup>24</sup> A. I can't -- I can't -- I can't recall that.		<sup>24</sup> he was inside the car. It happened so fast. I don't	
<sup>25</sup> Q. Did you leave the door open?		<sup>25</sup> know.	

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1 <b>issued and put it in there.</b>		1    MR. FREDRICKSON: That is a speaking	
2    Q. You said there's a saying never carry an		2    objection. That's what that means.	
3    empty gun?		3    MR. CUNNINGHAM: All right. We can agree to	
4 <b>A. Yes.</b>		4    disagree. But I think a speaking objection would be	
5    Q. Is that a policy from the APD?		5    more than just saying object to form and that it is	
6 <b>A. No.</b>		6    speculative and it's an improper hypothetical.	
7    Q. Like, where would one hear that saying?		7    MR. FREDRICKSON: Okay. Well, we do	
8 <b>A. Just a saying.</b>		8    disagree, but hopefully it won't be an issue.	
9    Q. Okay. Is it unique to law enforcement?		9    Can we read the last question back.	
10 <b>A. Yes.</b>		10   Okay. I got it. I can do it.	
11   Q. When you took rounds from your Glock 17 to		11 BY MR. FREDRICKSON:	
12   put in the Glock 43, how many rounds did you put in		12   Q. Officer Simmonds, if the APD had a policy	
13   the 43?		13   that forbid officers from firing in moving vehicles	
14 <b>A. I can't remember.</b>		14   except in cases of terrorism, would you comply with	
15   Q. If the APD had a policy that forbid officers		15   that policy?	
16   from firing in moving vehicles except in cases of		16   MS. BENSON: Same --	
17   terrorism, would you comply with that policy?		17   MR. CUNNINGHAM: Objection --	
18   MS. BENSON: Object to --		18   MS. BENSON: -- objection.	
19   MR. CUNNINGHAM: Objection --		19   MR. CUNNINGHAM: -- noted.	
20   MS. BENSON: -- form.		20 BY MR. FREDRICKSON:	
21   MR. CUNNINGHAM: -- to form. Speculative.		21   Q. You can answer.	
22 It --		22 <b>A. Yes, I would. I would.</b>	
23   MR. FREDRICKSON: Let's not -- object to		23   Q. If the APD had a policy forbidding officers	
24 form is good.		24 from in any way pursuing suspects fleeing in vehicles,	
25   MR. CUNNINGHAM: I mean, an objection to the		25 would you comply with that policy?	
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1   form isn't limited to -- I can -- I have a duty to		1 <b>A. Yes.</b>	
2 inform you why your question is bad so you can --		2   Q. If the APD had a policy that required you to	
3   MR. FREDRICKSON: No. No, you don't.		3 warn a suspect prior to firing your gun, would you	
4   MR. CUNNINGHAM: -- potentially try to cure		4 comply with that policy?	
5 the question.		5 <b>A. Yes.</b>	
6   MR. FREDRICKSON: No. If you object to		6   Q. What is the APD's vehicle pursuit policy?	
7 form, all form objections are covered. It's reserved.		7 <b>A. Pursuit policy? A person should be -- first</b>	
8 You don't need to -- you don't need to say anything		8 <b>of all, the severity of the crime. You're talking</b>	
9 else.		9 <b>about vehicle pursuit?</b>	
10   MR. CUNNINGHAM: I think Judge Batten -- I		10   Q. Yes.	
11 know we're not in front of him, but he would severely		11 <b>A. The severity of the crime. And if it's a</b>	
12 disagree with that.		12 <b>felony, the supervisor would allow the person to</b>	
13   MR. FREDRICKSON: Well, it's in the court's		13 <b>pursue that vehicle. The supervisor have the right to</b>	
14 standing order, if you want to review it.		14 <b>Code 4, cancel pursuit, or give permission for an</b>	
15   MR. CUNNINGHAM: I reviewed it this morning.		15 <b>officer to pursue a vehicle.</b>	
16 I don't think it's in the standing order.		16   Q. What does "Code 4" mean?	
17   MR. FREDRICKSON: Do you want me to get it		17 <b>A. Cancel.</b>	
18 out?		18   Q. What is APD's policy regarding firing a gun	
19   MR. CUNNINGHAM: I'll pull it up right now.		19 at moving vehicles?	
20   MR. FREDRICKSON: Page 17, speaking		20 <b>A. It's prohibited.</b>	
21 objections and other tactics for coaching the witness		21   Q. Is that a written policy?	
22 during the deposition are not permissible.		22 <b>A. Yes.</b>	
23   MR. CUNNINGHAM: That's not a speaking		23   Q. Was that a policy in effect on January 15,	
24 objection. I'm telling you the basis for my		24 2019?	
25 objection.		25 <b>A. That's totally different. I was stuck to</b>	

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<p style="text-align: right;">Page 33</p> <p><b>1 the car.</b></p> <p>2 Q. Well, I'm not asking about whether you were 3 stuck to the car, though.</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Was there a policy forbidding officers from 6 firing at moving vehicles?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Where would you find that policy?</p> <p>9 <b>APD SOPs.</b></p> <p>10 Q. Are there exceptions to the policy?</p> <p>11 <b>A. I can't recall.</b></p> <p>12 Q. Is it in Exhibit 1, the use of force SOP?</p> <p>13 <b>A. I'm not -- I'm not sure.</b></p> <p>14 Q. Could you take a look at that SOP and tell 15 me if it's in there.</p> <p>16 <b>A. I don't -- no, I don't see it. I don't see it.</b></p> <p>18 Q. Okay. How did you come to learn of the 19 policy against firing in moving vehicles?</p> <p>20 <b>A. In service training.</b></p> <p>21 Q. How long after firing did your jacket free 22 from the door?</p> <p>23 <b>A. Seconds after. I can't give a -- I can't give a precise time.</b></p> <p>25 Q. After you fired at the car, it didn't stop;</p>	<p style="text-align: right;">Page 35</p> <p><b>1 person compliant.</b></p> <p>2 Q. Subjective fear is not sufficient to justify 3 the use of force; right?</p> <p>4 MR. CUNNINGHAM: Object to the form.</p> <p>5 MS. BENSON: Yeah. Objection. I didn't 6 really understand the question, but object to form.</p> <p>7 <b>A. Say that again.</b></p> <p>8 BY MR. FREDRICKSON:</p> <p>9 Q. Subjective fear is not sufficient to justify 10 the use of force; correct?</p> <p>11 <b>A. Could you rephrase it? I don't understand the question.</b></p> <p>13 Q. Well, let's back up. What types of 14 circumstances justify the use of force?</p> <p>15 <b>A. It could be a lot of stuff. It could be try to arrest a person. It could -- it could be -- it could be so much. You just got to determine exactly what you want.</b></p> <p>19 Q. Do you know what "subjective" means?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Do you know what "objective" means?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Okay. Subjective fear would be fear that 24 you personally feel but that someone else in the same 25 situation may not necessarily feel.</p>
<p style="text-align: right;">Page 34</p> <p>1 correct?</p> <p>2 <b>A. No.</b></p> <p>3 Q. So did firing at the car make any difference 4 on whether your jacket was going to come free from the 5 door?</p> <p>6 <b>A. Well, I tried -- I tried to stop the suspect. So I can't tell it wouldn't make a difference.</b></p> <p>9 Q. Well, if the car didn't stop after you 10 fired, if you had not fired, the jacket still would 11 have come free from the door; true?</p> <p>12 MS. BENSON: Objection to form.</p> <p>13 <b>A. I don't know.</b></p> <p>14 BY MR. FREDRICKSON:</p> <p>15 Q. What is your definition of "force" as a law 16 enforcement officer?</p> <p>17 <b>A. Force is different categories. Force is any -- it could be deadly force. It could be force to get a person under -- subdue a person.</b></p> <p>20 Q. Is that it?</p> <p>21 <b>A. Yeah. I mean ...</b></p> <p>22 Q. And what does "reasonable force" mean to 23 you?</p> <p>24 <b>A. Reasonable force is you got to go one step above the force the person is using in order to get a</b></p>	<p style="text-align: right;">Page 36</p> <p>1 <b>A. Okay.</b></p> <p>2 Q. So is subjective fear sufficient to justify 3 the use of force?</p> <p>4 MS. BENSON: Object to form.</p> <p>5 MR. CUNNINGHAM: Object to the form.</p> <p>6 <b>A. Rephrase it again.</b></p> <p>7 BY MR. FREDRICKSON:</p> <p>8 Q. Okay. Subjective fear would be fear that 9 you personally feel but an average person in the exact 10 same position would not feel.</p> <p>11 MR. CUNNINGHAM: Object to the form.</p> <p>12 BY MR. FREDRICKSON:</p> <p>13 Q. Does that make sense?</p> <p>14 <b>A. Yeah. Okay.</b></p> <p>15 Q. Okay. So is your subjective fear sufficient 16 to justify the use of force?</p> <p>17 MS. BENSON: I'm going to object to form.</p> <p>18 It's a legal conclusion.</p> <p>19 If you can answer.</p> <p>20 <b>A. Yes.</b></p> <p>21 BY MR. FREDRICKSON:</p> <p>22 Q. Your subjective fear is sufficient to 23 justify the use of force?</p> <p>24 <b>A. Yeah, if I feel that I'm in danger.</b></p> <p>25 Q. What does "lethal force" mean?</p>

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1 <b>A. Lethal force. To kill someone, kill</b>		1    Q. What is it used for?	
2 <b>somebody.</b>		2 <b>A. To assist the officers on the -- on the</b>	
3    Q. And what does "less lethal force" mean?		3 <b>ground.</b>	
4 <b>A. Just use minimum force to get a job done.</b>		4    Q. How so?	
5    Q. Are you trained in diffusing techniques?		5 <b>A. Could be a fleeing -- a fleeing suspect,</b>	
6 <b>A. Yes.</b>		6 <b>barricaded gunman. Just assisting the police in</b>	
7    Q. What does that mean?		7 <b>general.</b>	
8 <b>A. You can verbal -- you can talk a person</b>		8    Q. Were you trained to use cover in the event	
9 <b>down, de-escalate the whole thing if you can.</b>		9 you perceive a possible threat?	
10   Q. Are you trained in disengagement and		10 <b>A. Say that again.</b>	
11 tactical repositioning?		11   Q. Were you trained to use cover in the event	
12 <b>A. Yes.</b>		12 you perceive a possible threat?	
13   Q. And what does that mean?		13 <b>A. Yes.</b>	
14 <b>A. If you can't get something done or get a</b>		14   Q. And please describe what "cover" is.	
15 <b>person under control, you call the backup, reposition</b>		15 <b>A. "Cover" mean if you're exposed to danger,</b>	
16 <b>yourself until you get help.</b>		16 <b>you take cover behind a solid object or . . .</b>	
17   Q. What is a fleeing felon?		17   Q. What are some examples of cover?	
18 <b>A. A fleeing felon is a person who commits a</b>		18 <b>A. If you're in a shootout with somebody, you</b>	
19 <b>felony and fleeing.</b>		19 <b>go behind a car, preferably the front of the car where</b>	
20   Q. When can you use deadly force on a fleeing		20 <b>the engine is.</b>	
21 felon?		21   Q. An engine is a good form of cover; true?	
22 <b>A. If he possessed a weapon or is a danger to</b>		22 <b>A. If that's what -- is the only thing that's</b>	
23 <b>the public.</b>		23 <b>available, yes.</b>	
24   Q. Describe what you mean by "a danger to the		24   Q. What is concealment?	
25 public."		25 <b>A. Same thing.</b>	
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1 <b>A. For example, a person rob a bank and have a</b>		1    Q. Concealment and cover are the same?	
2 <b>gun, killed some people at the bank and running</b>		2 <b>A. Well, basically.</b>	
3 <b>towards the bus stop with a gun.</b>		3    Q. Are there any differences that you're aware	
4    Q. So the danger has to be imminent; right?		4 of?	
5 <b>A. Yeah.</b>		5 <b>A. No.</b>	
6    Q. Is stealing a car a property crime or a		6    Q. If APD officers -- officer injures a	
7 violent crime?		7 subject, is the officer required to render medical	
8 <b>A. It all depends on how it was used.</b>		8 aid?	
9    Q. It depends on what?		9 <b>A. Yes.</b>	
10 <b>A. How the car was used.</b>		10   MR. FREDRICKSON: Can we make this	
11   Q. Describe what you mean by that.		11 Exhibit 3, please.	
12 <b>A. I mean, it's a property crime if a person</b>		12   (Exhibit 3 marked.)	
13 <b>just steal a car or whatever. But if it use the same</b>		13 BY MR. FREDRICKSON:	
14 <b>car to inflict harm to another person, it could be</b>		14   Q. Okay. Officer Simmonds, I've handed you	
15 <b>construed differently.</b>		15 Exhibit 3. I understand this to be a report of your	
16   Q. What does the phrase "totality of the		16 law enforcement training; is that true?	
17 circumstances" mean in a law enforcement situation?		17 <b>A. Yes.</b>	
18 <b>A. All the facts put together.</b>		18   Q. Does it accurately list the training you've	
19   Q. And what does the term "situational		19 received during your career with APD?	
20 awareness" mean with regard to a law enforcement		20 <b>A. I would suppose so.</b>	
21 situation?		21   Q. Have you received law enforcement training	
22 <b>A. The whole -- amount of people, just the</b>		22 other than what's listed on this report?	
23 <b>whole situation around the incident.</b>		23 <b>A. No.</b>	
24   Q. Does APD have an air support division?		24   Q. When you moved to the EPU, did you receive	
25 <b>A. Yes.</b>		25 any training specific to that unit?	
	Page 37		Page 39
1 <b>A. Lethal force. To kill someone, kill</b>		1    Q. What is it used for?	
2 <b>somebody.</b>		2 <b>A. To assist the officers on the -- on the</b>	
3    Q. And what does "less lethal force" mean?		3 <b>ground.</b>	
4 <b>A. Just use minimum force to get a job done.</b>		4    Q. How so?	
5    Q. Are you trained in diffusing techniques?		5 <b>A. Could be a fleeing -- a fleeing suspect,</b>	
6 <b>A. Yes.</b>		6 <b>barricaded gunman. Just assisting the police in</b>	
7    Q. What does that mean?		7 <b>general.</b>	
8 <b>A. You can verbal -- you can talk a person</b>		8    Q. Were you trained to use cover in the event	
9 <b>down, de-escalate the whole thing if you can.</b>		9 you perceive a possible threat?	
10   Q. Are you trained in disengagement and		10 <b>A. Say that again.</b>	
11 tactical repositioning?		11   Q. Were you trained to use cover in the event	
12 <b>A. Yes.</b>		12 you perceive a possible threat?	
13   Q. And what does that mean?		13 <b>A. Yes.</b>	
14 <b>A. If you can't get something done or get a</b>		14   Q. And please describe what "cover" is.	
15 <b>person under control, you call the backup, reposition</b>		15 <b>A. "Cover" mean if you're exposed to danger,</b>	
16 <b>yourself until you get help.</b>		16 <b>you take cover behind a solid object or . . .</b>	
17   Q. What is a fleeing felon?		17   Q. What are some examples of cover?	
18 <b>A. A fleeing felon is a person who commits a</b>		18 <b>A. If you're in a shootout with somebody, you</b>	
19 <b>felony and fleeing.</b>		19 <b>go behind a car, preferably the front of the car where</b>	
20   Q. When can you use deadly force on a fleeing		20 <b>the engine is.</b>	
21 felon?		21   Q. An engine is a good form of cover; true?	
22 <b>A. If he possessed a weapon or is a danger to</b>		22 <b>A. If that's what -- is the only thing that's</b>	
23 <b>the public.</b>		23 <b>available, yes.</b>	
24   Q. Describe what you mean by "a danger to the		24   Q. What is concealment?	
25 public."		25 <b>A. Same thing.</b>	
	Page 38		Page 40
1 <b>A. For example, a person rob a bank and have a</b>		1    Q. Concealment and cover are the same?	
2 <b>gun, killed some people at the bank and running</b>		2 <b>A. Well, basically.</b>	
3 <b>towards the bus stop with a gun.</b>		3    Q. Are there any differences that you're aware	
4    Q. So the danger has to be imminent; right?		4 of?	
5 <b>A. Yeah.</b>		5 <b>A. No.</b>	
6    Q. Is stealing a car a property crime or a		6    Q. If APD officers -- officer injures a	
7 violent crime?		7 subject, is the officer required to render medical	
8 <b>A. It all depends on how it was used.</b>		8 aid?	
9    Q. It depends on what?		9 <b>A. Yes.</b>	
10 <b>A. How the car was used.</b>		10   MR. FREDRICKSON: Can we make this	
11   Q. Describe what you mean by that.		11 Exhibit 3, please.	
12 <b>A. I mean, it's a property crime if a person</b>		12   (Exhibit 3 marked.)	
13 <b>just steal a car or whatever. But if it use the same</b>		13 BY MR. FREDRICKSON:	
14 <b>car to inflict harm to another person, it could be</b>		14   Q. Okay. Officer Simmonds, I've handed you	
15 <b>construed differently.</b>		15 Exhibit 3. I understand this to be a report of your	
16   Q. What does the phrase "totality of the		16 law enforcement training; is that true?	
17 circumstances" mean in a law enforcement situation?		17 <b>A. Yes.</b>	
18 <b>A. All the facts put together.</b>		18   Q. Does it accurately list the training you've	
19   Q. And what does the term "situational		19 received during your career with APD?	
20 awareness" mean with regard to a law enforcement		20 <b>A. I would suppose so.</b>	
21 situation?		21   Q. Have you received law enforcement training	
22 <b>A. The whole -- amount of people, just the</b>		22 other than what's listed on this report?	
23 <b>whole situation around the incident.</b>		23 <b>A. No.</b>	
24   Q. Does APD have an air support division?		24   Q. When you moved to the EPU, did you receive	
25 <b>A. Yes.</b>		25 any training specific to that unit?	

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1 <b>A. I got shot before. So bullet fragments</b>		1 off balance from the car.	
2 was -- is in -- on my chest.		2 <b>A. No.</b>	
3     Q. When did that occur?		3     Q. You fell because your foot hurt and --	
4 <b>A. I think it's 1990.</b>		4 <b>A. Yeah.</b>	
5     Q. 1990?		5     Q. Okay. Were you injured at all by the fall	
6 <b>A. (Nods head.)</b>		6 to the ground?	
7     Q. Was that in Jamaica?		7 <b>A. No.</b>	
8 <b>A. Yes.</b>		8     Q. When your foot was run over, was your shoe	
9     Q. Was your foot run over before or after your		9 damaged at all?	
10 jacket was stuck in the vehicle door?		10 <b>A. No.</b>	
11 <b>A. I think it was after.</b>		11    Q. And when your -- during this incident in	
12    Q. So that would mean that your foot was run		12 which your jacket was stuck in the car door, was your	
13 over after you fired at the driver of the car.		13 jacket damaged at all?	
14 <b>A. Yes.</b>		14 <b>A. Yes.</b>	
15    Q. Which portion of your jacket was stuck in		15    Q. How so?	
16 the door?		16 <b>A. When I -- when I tug it from the -- pull it</b>	
17 <b>A. This section right here.</b>		17 <b>from the car.</b>	
18    Q. Your left?		18    Q. What kind of damage happened to the jacket?	
19 <b>A. Yes.</b>		19 <b>A. It got a -- it got a tear inside of it.</b>	
20    Q. What happened immediately after your jacket		20    MR. FREDRICKSON: This will be Exhibit 5.	
21 freed from the vehicle door?		21    (Exhibit 5 marked.)	
22 <b>A. I get out of the road, sit on the side of</b>		22    MS. BENSON: And, look, before we start this	
23 <b>the street because I was in pain, and then called</b>		23 questioning on here, I definitely want to just put a	
24 <b>the -- that's when the lady pulls up.</b>		24 general objection to the timing of this notice to	
25    Q. I'm sorry. That's when what?		25 produce -- I assume that's what this is -- in that it	
	Page 58		Page 60
1 <b>A. The witness -- not the witness. The lady</b>		1 was only served less than a week ago. But I am going	
2 <b>officer pulled up. So I stand up, start talking to</b>		2 to let him go ahead and answer any questions.	
3 <b>her, and then I called dispatch.</b>		3 BY MR. FREDRICKSON:	
4     Q. So when you first saw -- I'm sorry.		4     Q. Okay. Mr. Simmonds, this is Exhibit 5.	
5     MR. FREDRICKSON: Let's go off the record		5 Have you seen this document before?	
6 for a second.		6 <b>A. No.</b>	
7     VIDEOGRAPHER: Going off the record at		7     Q. Okay. If you look at Exhibit A, which is	
8 11:46 a.m.		8 attached to Exhibit 5, on the last page it asks you to	
9     (OFF THE RECORD)		9 produce at this deposition the clothing items that you	
10    VIDEOGRAPHER: We're back on the record at		10 were wearing during this incident on January 15, 2019.	
11 11:46 a.m.		11    Do you see that?	
12 BY MR. FREDRICKSON:		12 <b>A. Yes.</b>	
13    Q. Okay. So I want to make sure I heard that		13    Q. Did you bring those items today?	
14 last answer. After your jacket freed from the car		14 <b>A. No.</b>	
15 door, you fell to the ground?		15    Q. Why not?	
16 <b>A. Yes. Yes.</b>		16 <b>A. I don't have them.</b>	
17    Q. And you were on the ground when you first		17    Q. Did you attempt to locate them?	
18 saw the investigator who you talked about earlier?		18 <b>A. Yes.</b>	
19 <b>A. Yeah. I got up, and I spoke with her.</b>		19    Q. Why don't you have them?	
20    Q. How hard did you fall?		20 <b>A. I don't know where they're at.</b>	
21 <b>A. No. It's not -- it's not -- it's not like I</b>		21    Q. What did you do to attempt to locate them?	
22 <b>fall. When I released from the -- from the car, got</b>		22 <b>A. I searched the closet. I haven't seen them</b>	
23 <b>out of the road and, because I was in so much severe</b>		23 <b>from that -- from that night.</b>	
24 <b>pain, kind of go down to the ground to heal my foot.</b>		24    Q. You haven't seen the suit since the night of	
25    Q. Okay. So you didn't fall because you were		25 the shooting on -- in January 2019?	

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1	<b>A. Yes.</b>	1	Q. Did you take it anywhere that you're aware
2	Q. And you haven't seen the shoes you were	2	of?
3	wearing since that night?	3	<b>A. No.</b>
4	<b>A. The -- I didn't -- I didn't look for the</b>	4	Q. Did you take it to a tailor?
5	<b>shoes. I didn't -- I didn't -- I didn't search for</b>	5	<b>A. No.</b>
6	<b>the shoes.</b>	6	Q. To a cleaner?
7	Q. Okay. Do you still have the shoes?	7	<b>A. No.</b>
8	<b>A. I'm not sure.</b>	8	Q. When was the last time you saw this suit in
9	Q. When was the last time that you can be	9	the corner that you threw it in?
10	certain of that you did have the shoes?	10	<b>A. Just that night.</b>
11	<b>A. I can't -- I can't say.</b>	11	Q. And you never saw it again?
12	Q. Have you worn the shoes since this incident	12	<b>A. I can't recall.</b>
13	in --	13	Q. When you took it off and threw it in a
14	<b>A. No.</b>	14	corner, this was at your home in McDonough?
15	Q. -- 2019?	15	<b>A. Yes.</b>
16	Okay. Well, I'll ask that you attempt to	16	Q. Who lives with you there?
17	locate those shoes and not do anything to repair or	17	<b>A. My wife.</b>
18	alter them. Okay?	18	Q. Do you think that she did anything with the
19	<b>A. Okay.</b>	19	suit?
20	Q. As a police officer, you're aware that	20	<b>A. I can't tell.</b>
21	evidence pertaining to an incident that's under	21	Q. Did you ask her if she did anything with the
22	investigation needs to be carefully preserved; right?	22	suit?
23	<b>A. Yes.</b>	23	<b>A. I asked her for it. She said she don't</b>
24	Q. And it's your testimony that you fired at	24	<b>remember seeing it. It's been so long.</b>
25	the driver of this vehicle because your jacket was	25	Q. Where did you purchase that suit?
	Page 62		Page 64
1	caught in the door; true?	1	<b>A. I can't remember.</b>
2	<b>A. Yes.</b>	2	Q. Did anyone other than your wife live with
3	MR. CUNNINGHAM: Object to the form.	3	you at the time?
4	<b>A. Yes.</b>	4	<b>A. Yes.</b>
5	BY MR. FREDRICKSON:	5	Q. Who was that?
6	Q. So evidence that your jacket was damaged	6	<b>A. I've got a son and two stepsons.</b>
7	during that struggle would be beneficial to your	7	Q. So three?
8	defense; right?	8	<b>A. Yes.</b>
9	MS. BENSON: Object to form.	9	Q. One son and two stepsons?
10	<b>A. I wasn't thinking at the time about -- at</b>	10	<b>A. Yes.</b>
11	<b>the time about that.</b>	11	Q. Did you ask each of them if they did
12	BY MR. FREDRICKSON:	12	anything with your suit?
13	Q. What did you do with the suit?	13	<b>A. Yes.</b>
14	MS. BENSON: Object to --	14	Q. And what did they say?
15	<b>A. When I --</b>	15	<b>A. They don't know.</b>
16	MS. BENSON: I'm sorry. Go ahead.	16	Q. When you fell after your jacket came out of
17	<b>A. When I got home, I threw it -- I threw it --</b>	17	the door, which portions of your body hit the ground?
18	<b>because it was damaged, I threw it in a corner.</b>	18	<b>A. I think my knee.</b>
19	BY MR. FREDRICKSON:	19	Q. You said your knee?
20	Q. You threw it in a corner at your house?	20	<b>A. Yeah.</b>
21	<b>A. Yes.</b>	21	Q. Which knee?
22	Q. What did you do with it after that?	22	<b>A. I think my left knee.</b>
23	<b>A. I don't know what happened after that.</b>	23	Q. Anything else?
24	Q. Did you intentionally throw the suit away?	24	<b>A. No.</b>
25	<b>A. No.</b>	25	MR. FREDRICKSON: This will be Exhibit 6.

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1        (Exhibit 6 marked.)		1 <b>A. Something looked like a gun, a black object.</b>	
2 BY MR. FREDRICKSON:		2        Q. Which hand was it in?	
3        Q. Exhibit 6 is several photos that I believe		3 <b>A. I think his right hand.</b>	
4 are you immediately after this incident inside the		4        Q. What kind of gun was it?	
5 ambulance; is that true?		5 <b>A. I don't know.</b>	
6 <b>A. Yes.</b>		6        Q. Was it a handgun?	
7        Q. Have you seen these photos before?		7 <b>A. Yes.</b>	
8 <b>A. No.</b>		8        Q. Where was it at?	
9        Q. Do you recognize when they were taken?		9 <b>A. I said -- I said like a gun. I'm not sure</b>	
10 <b>A. Yes.</b>		10 <b>it was a gun. It was something looked like a gun.</b>	
11      Q. Who took the photos?		11     Q. What else might it have been?	
12 <b>A. The GBI -- GBI personnel.</b>		12 <b>A. I don't know.</b>	
13      Q. If you look at the fourth image, we can see		13     MS. BENSON: Object to form.	
14 your right foot fairly well. Is there any marking at		14 BY MR. FREDRICKSON:	
15 all on your right shoe?		15     Q. Where was it pointed?	
16 <b>A. No.</b>		16 <b>A. He reached for it. At that time, the door</b>	
17      Q. Would you expect a car tire to leave some		17 <b>closes and I got stuck in the car.</b>	
18 kind of marking after running over your foot?		18     Q. So you were never sure whether it was, in	
19 <b>A. Not necessarily.</b>		19     fact, a gun?	
20      Q. Not even a scuff or some dirt?		20 <b>A. No.</b>	
21 <b>A. I mean, it was fast, so not -- not</b>		21      Q. Is it reasonable to use deadly force because	
22 <b>necessarily.</b>		22 someone has an unknown object in their hand?	
23      Q. And if you turn back to the first page, does		23     MS. BENSON: Object to form.	
24 the jacket in this photo appear to be damaged in any		24 <b>A. Say it again.</b>	
25 way?		25	
	Page 66		Page 68
1 <b>A. It's the inside of the jacket.</b>		1 BY MR. FREDRICKSON:	
2        Q. There's no damage to the outside of the		2        Q. Is it reasonable to use deadly force against	
3 jacket?		3 someone who has an unknown object in their hand?	
4 <b>A. No.</b>		4        MR. CUNNINGHAM: I'm going to note an	
5        Q. And in any of these photos in Exhibit 6 is		5 objection as well.	
6 there any damage or dirt on either of your knees?		6 <b>A. It all depends.</b>	
7 <b>A. No.</b>		7 BY MR. FREDRICKSON:	
8        Q. Would you expect there to be some dirt or		8        Q. What does it depend on?	
9 scuff if you fell onto your knee?		9 <b>A. I mean, it all depends on the -- on how the</b>	
10 <b>A. No. It's -- it's not -- it wasn't any dirt.</b>		10 <b>person -- his body language and, you know, how -- the</b>	
11      Q. The street was not dirty?		11 <b>circumstances of how the incident may happen and</b>	
12 <b>A. It's asphalt. I mean ...</b>		12 <b>occur.</b>	
13      Q. After the incident, you told someone that		13      Q. What types of circumstances would justify	
14 D'Ettrick had a gun; correct?		14 using deadly force against someone with an unknown	
15 <b>A. Yes.</b>		15 object in their hand?	
16      Q. Who did you tell that to?		16     MS. BENSON: Object to form.	
17 <b>A. The officer responding.</b>		17 <b>A. I've learned of incident, you know, people</b>	
18      Q. Was that true?		18 <b>get shot because they got a cell phone. It just</b>	
19 <b>A. When we was struggling inside the car, he</b>		19 <b>varies.</b>	
20 <b>reached for some -- come up with something looked like</b>		20 BY MR. FREDRICKSON:	
21 <b>a gun. So I told the officer I think he got a gun.</b>		21      Q. I'm sorry. What was that last part?	
22      Q. He -- explain that. He reached for		22 <b>A. I said it varies. I've seen people get shot</b>	
23 something like a gun?		23 <b>because they've got a cell phone. They reach for a</b>	
24 <b>A. Yes.</b>		24 <b>cell phone. I mean, we don't know if you ...</b>	
25      Q. Explain to me exactly what you saw.		25      Q. When did you see someone get shot because	

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<p style="text-align: right;">Page 69</p> <p><sup>1</sup> they had a cell phone?</p> <p><sup>2</sup> <b>A. I can't recall.</b></p> <p><sup>3</sup> Q. Was that shooting reasonable, in your <sup>4</sup> opinion?</p> <p><sup>5</sup> <b>A. That's what I'm saying. It's all dependent 6 on the person involved and if the person feel like 7 their life is in danger at some point.</b></p> <p><sup>8</sup> Q. So D'Ettrick, in fact, did not have a gun <sup>9</sup> when he was in your car; correct?</p> <p>10 MR. CUNNINGHAM: Object to the form.</p> <p>11 <b>A. I don't know.</b></p> <p>12 BY MR. FREDRICKSON:</p> <p>13 Q. You don't know?</p> <p>14 <b>A. I don't know.</b></p> <p>15 Q. Have you tried to find out?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Is that something you'd like to know?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. I'm sorry. I didn't catch the answer.</p> <p>20 <b>A. No. Yes. But, I mean, I heard that there 21 was no gun found.</b></p> <p>22 Q. You heard from who?</p> <p>23 <b>A. I can't -- I can't remember who it was.</b></p> <p>24 Q. Was it someone who was investigating the 25 incident?</p>	<p style="text-align: right;">Page 71</p> <p><sup>1</sup> <b>BY MR. FREDRICKSON:</b></p> <p><sup>2</sup> Q. When the car started to drive away and you <sup>3</sup> reached inside, were D'Ettrick's hands on the steering <sup>4</sup> wheel?</p> <p><sup>5</sup> <b>A. Yeah, it was on the steering wheel.</b></p> <p><sup>6</sup> Q. Were both hands on the steering wheel?</p> <p><sup>7</sup> <b>A. That, I'm not sure. But hands was on the 8 wheel.</b></p> <p><sup>9</sup> Q. If his hands were on the wheel, he was not <sup>10</sup> holding a gun, though; correct?</p> <p><sup>11</sup> <b>A. No. But technically, I mean, like, he was 12 pushing me out of the car anyway. So at some point, I 13 mean, either one or two hands may be on the wheel or 14 not.</b></p> <p><sup>15</sup> Q. Which hand did he push you with?</p> <p><sup>16</sup> <b>A. I have no idea.</b></p> <p><sup>17</sup> Q. But it's your testimony that he was driving <sup>18</sup> the car, pushing you, and reaching for a gun?</p> <p><sup>19</sup> <b>A. Yep.</b></p> <p><sup>20</sup> Q. Wouldn't that require three hands?</p> <p>21 MR. CUNNINGHAM: Object to the --</p> <p>22 MS. BENSON: Object to form.</p> <p>23 MR. CUNNINGHAM: -- form. It's 24 argumentative.</p> <p>25 <b>A. No.</b></p>
<p style="text-align: right;">Page 70</p> <p><sup>1</sup> <b>A. I can't remember.</b></p> <p><sup>2</sup> Q. Were there any guns belonging to you in the 3 vehicle?</p> <p><sup>4</sup> <b>A. No.</b></p> <p><sup>5</sup> Q. After the shooting and then the crash, when 6 you attempted to get into the vehicle, did you ever 7 see a gun inside the vehicle?</p> <p><sup>8</sup> <b>A. I did not attempt to go inside the vehicle.</b></p> <p><sup>9</sup> Q. You didn't what?</p> <p><sup>10</sup> <b>A. I didn't attempt to go inside.</b></p> <p><sup>11</sup> Q. Okay. You said you had heard that there was 12 no gun; is that right?</p> <p><sup>13</sup> <b>A. Yes.</b></p> <p><sup>14</sup> Q. Have you heard from anybody that there was a 15 gun?</p> <p><sup>16</sup> <b>A. No.</b></p> <p><sup>17</sup> Q. I believe you testified earlier that you 18 couldn't tell whether D'Ettrick's hands were on the 19 steering wheel when you reached inside the car; is 20 that right?</p> <p><sup>21</sup> MR. CUNNINGHAM: Object to the form of the 22 question.</p> <p><sup>23</sup> MS. BENSON: Same.</p> <p><sup>24</sup> <b>A. I can't -- say that again.</b></p> <p><sup>25</sup></p>	<p style="text-align: right;">Page 72</p> <p><sup>1</sup> <b>BY MR. FREDRICKSON:</b></p> <p><sup>2</sup> Q. How was he accomplishing those three things?</p> <p><sup>3</sup> <b>A. I mean, I -- I mean, a person -- everything 4 wasn't happening at one -- at one point. He wasn't 5 doing all three things at the same time.</b></p> <p><sup>6</sup> Q. So over the course of how much time did 7 those things elapse?</p> <p><sup>8</sup> <b>A. I don't know.</b></p> <p><sup>9</sup> Q. Was it 30 seconds? 5 minutes?</p> <p><sup>10</sup> MS. BENSON: Object to form. Asked and 11 answered.</p> <p><sup>12</sup> BY MR. FREDRICKSON:</p> <p><sup>13</sup> Q. Roughly, how long did this struggle --</p> <p><sup>14</sup> <b>A. I don't know.</b></p> <p><sup>15</sup> Q. -- cover?</p> <p><sup>16</sup> Was the car ever traveling at a dangerous 17 speed?</p> <p><sup>18</sup> <b>A. It was -- it was -- I'm not -- I'm not sure 19 what's required a dangerous speed.</b></p> <p><sup>20</sup> Q. Have you received any training on what would 21 constitute dangerous driving?</p> <p><sup>22</sup> <b>A. Yes.</b></p> <p><sup>23</sup> Q. But you don't know what would be a dangerous 24 speed on Whitehall Street?</p> <p><sup>25</sup> <b>A. A car could be going 15 miles per hour and</b></p>

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<p style="text-align: right;">Page 73</p> <p><b>1 kill somebody. I mean, it all depends. Like, I can't 2 understand that question. I can't answer the 3 question.</b></p> <p>4 Q. How fast was the car going, roughly?</p> <p>5 A. <b>I don't know.</b></p> <p>6 Q. If the left side of your jacket was stuck in 7 the driver's door, you would be facing, then, towards 8 the rear of the vehicle; correct?</p> <p>9 A. <b>No. Facing towards the car.</b></p> <p>10 Q. But the car's on your right side; correct?</p> <p>11 A. <b>No. I was -- the car was right here. I'm 12 right here.</b></p> <p>13 Q. Explain that for me. I'm not sure what you 14 mean.</p> <p>15 A. <b>I was stuck in the car. So the car is right 16 here, and I'm right here. I don't know how to explain 17 it. It's the left side of my jacket.</b></p> <p>18 Q. So you're facing directly --</p> <p>19 A. <b>To the car.</b></p> <p>20 Q. -- towards the car --</p> <p>21 A. <b>Yes.</b></p> <p>22 Q. -- perpendicular.</p> <p>23 I'm trying to understand if you left -- your 24 left lapel is in the driver's side of the door, where 25 is the gun in relation to your body when you fire?</p>	<p style="text-align: right;">Page 75</p> <p>1 your jacket is stuck to the car, you're moving with 2 it; correct?</p> <p>3 A. <b>Yeah.</b></p> <p>4 Q. So if you're directly facing the car, what 5 would the backdrop of the bullet trajectory be?</p> <p>6 A. <b>I don't know.</b></p> <p>7 MR. FREDRICKSON: Let's mark Exhibit 7. (Exhibit 7 marked.)</p> <p>9 BY MR. FREDRICKSON:</p> <p>10 Q. Exhibit 7 is a set of photos of the front of 11 the vehicle. Have you seen these photos before?</p> <p>12 A. <b>No.</b></p> <p>13 Q. Have you seen the GBI's summary of 14 investigation regarding this incident?</p> <p>15 A. <b>No.</b></p> <p>16 Q. There are what I understand to be two bullet 17 holes in the windshield in these photos.</p> <p>18 MS. BENSON: Object to --</p> <p>19 MR. CUNNINGHAM: Object to the --</p> <p>20 MS. BENSON: -- form.</p> <p>21 MR. CUNNINGHAM: -- form.</p> <p>22 MR. FREDRICKSON: Okay.</p> <p>23 MS. BENSON: Nothing has indicated that.</p> <p>24 So . . .</p> <p>25 MR. FREDRICKSON: This is going to be</p>
<p style="text-align: right;">Page 74</p> <p>1 A. <b>I fired -- I fired up over my head.</b></p> <p>2 Q. Okay. So you would be firing over your head 3 downward towards the driver of the vehicle?</p> <p>4 A. <b>I can't explain to you how it happened. But 5 I was stuck. I fired. It happened so fast. It was a 6 stressful situation. I can't tell you exactly how I 7 fired.</b></p> <p>8 Q. If the left side of your jacket is stuck in 9 the driver's door, we can agree, though, that there's 10 only several inches between you and the car.</p> <p>11 A. <b>Yes.</b></p> <p>12 Q. In which you fit your gun to fire or reach 13 over your head?</p> <p>14 A. <b>I can't tell you that.</b></p> <p>15 Q. And if you are facing directly toward the 16 driver's side of the car, when you fired, the 17 trajectory of the bullet would be towards the 18 passenger side of the car; true?</p> <p>19 MS. BENSON: Object to form.</p> <p>20 A. <b>I said before, the car was moving. So 21 the -- I've got to be behind a little.</b></p> <p>22 BY MR. FREDRICKSON:</p> <p>23 Q. Behind the car?</p> <p>24 A. <b>Behind the door.</b></p> <p>25 Q. Well, regardless of whether it's moving, if</p>	<p style="text-align: right;">Page 76</p> <p>1 Exhibit 8. (Exhibit 8 marked.)</p> <p>3 MR. CUNNINGHAM: Do you mean to give us the 4 personnel file?</p> <p>5 MR. FREDRICKSON: Oh, no. I'm sorry.</p> <p>6 That's the wrong document.</p> <p>7 MR. CUNNINGHAM: That's what I figured.</p> <p>8 MR. FREDRICKSON: Thank you, Pearson.</p> <p>9 MR. HARMAN: It's already been marked, 10 though. So --</p> <p>11 MR. FREDRICKSON: We can call it Exhibit 8.</p> <p>12 That's fine.</p> <p>13 MR. CUNNINGHAM: All right. So we're 14 leaving that as Exhibit 8?</p> <p>15 MR. FREDRICKSON: Yeah.</p> <p>16 MS. BENSON: And this is 9? Okay.</p> <p>17 MR. FREDRICKSON: And this will be 9. (Exhibit 9 marked.)</p> <p>19 BY MR. FREDRICKSON:</p> <p>20 Q. I didn't realize this one was not 21 consecutively numbered. About halfway through the 22 document there's a page that says Exhibit 25 at the 23 bottom right corner, and at the bottom left it has the 24 number 690580.</p> <p>25 MR. CUNNINGHAM: 58 -- yeah.</p>

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<p style="text-align: right;">Page 93</p> <p>1 video file with the time stamp 1930 and 25 seconds a      2 person enters the screen in the top right; correct?</p> <p>3     <b>A. Yes.</b></p> <p>4     Q. Is that the person who got in your vehicle?</p> <p>5     <b>A. I don't know.</b></p> <p>6     Q. Okay. I want to play from this point. And      7 can you tell me at which point you grabbed the door of      8 the car and attempted to step in?</p> <p>9         (Video played.)</p> <p>10    <b>A. I cannot tell the exact time.</b></p> <p>11 BY MR. FREDRICKSON:</p> <p>12   Q. Okay. On this frame at 1930 and 35 seconds,      13 is this you running behind the car?</p> <p>14   <b>A. It appears so.</b></p> <p>15   Q. And at that point, you are not in contact      16 with the car; correct?</p> <p>17   <b>A. No.</b></p> <p>18   Q. And you're not holding on to the car?</p> <p>19   <b>A. No.</b></p> <p>20   Q. I'm sorry. It just wasn't clear. At this      21 point in the video, at 1930 and 35 seconds, you are      22 not holding on to the car.</p> <p>23   <b>A. No.</b></p> <p>24   Q. In fact, you're not in contact with the car      25 in any way.</p>	<p style="text-align: right;">Page 95</p> <p>1     <b>A. Yes.</b></p> <p>2 BY MR. FREDRICKSON:</p> <p>3     Q. Okay. I'm going to go a little bit further.</p> <p>4 At 1930 and 39 seconds, is this again you?</p> <p>5     <b>A. Yes.</b></p> <p>6     Q. And, again, at this point, 1930 and      7 39 seconds, you are not in contact with the car in any      8 way?</p> <p>9     <b>A. No.</b></p> <p>10   Q. And at this point, 1930 and 39 seconds, are      11 you in any danger from the car?</p> <p>12   <b>A. No, not at this -- no.</b></p> <p>13   Q. When in this video did the struggle that you      14 described earlier take place?</p> <p>15   <b>A. It -- twice. At the pumps and, I guess,</b>      16 <b>other frame of the cameras.</b></p> <p>17   Q. Okay. Let me back up. Tell me when to      18 pause when you struggled with D'Ettrick at the pumps.</p> <p>19         (Video played.)</p> <p>20   <b>A. It's hard to tell. Sometime around there.</b></p> <p>21 <b>It's hard to tell because --</b></p> <p>22 BY MR. FREDRICKSON:</p> <p>23   Q. What --</p> <p>24   <b>A. -- I don't know when he got inside the car.</b></p> <p>25 <b>I just -- I just can't -- that's -- I just can't tell.</b></p>
<p style="text-align: right;">Page 94</p> <p>1     <b>A. No.</b></p> <p>2     Q. But you are chasing the car; true?</p> <p>3     <b>A. Yes.</b></p> <p>4     Q. At this point, you were in no danger from      5 the car; right?</p> <p>6     <b>A. No.</b></p> <p>7     Q. No, that's not right?</p> <p>8     <b>A. No.</b></p> <p>9     Q. No, you were not in danger?</p> <p>10    <b>A. Yes.</b></p> <p>11   Q. I'm sorry. That's just a bunch of -- it's      12 unclear.</p> <p>13         At this point in this video, 1930 and      14 35 seconds, are you in any danger from the car?</p> <p>15    <b>A. No.</b></p> <p>16   Q. Okay. Thank you.</p> <p>17         If at this point you had simply stopped      18 chasing the car, you would have been fine; right?</p> <p>19         MS. BENSON: Object to form.</p> <p>20    <b>A. I was trying to retrieve the car.</b></p> <p>21 BY MR. FREDRICKSON:</p> <p>22   Q. Okay. But if you had not tried to retrieve      23 the car and had stopped chasing it at this point, you      24 would have been fine.</p> <p>25         MS. BENSON: Same objection.</p>	<p style="text-align: right;">Page 96</p> <p>1     Q. Okay. So there was a struggle between you      2 and D'Ettrick at the pumps before the car drove off?</p> <p>3     <b>A. Yes.</b></p> <p>4     Q. And describe that for me.</p> <p>5     <b>A. When I opened the door to get inside the</b>      6 <b>car, he was -- he was inside the car. So I hold on to</b>      7 <b>the -- to the door, the steering. That's when he</b>      8 <b>start pushing me and sped off.</b></p> <p>9     Q. Okay. And then between -- if I understand      10 your testimony right, between 19:30:35 and 19:30:39      11 here is when the second portion of the struggle      12 occurred.</p> <p>13    <b>A. Yes.</b></p> <p>14   Q. And what occurred during that time frame?</p> <p>15    <b>A. That's when the door was still open. So I</b>      16 <b>grabbed on to the door. The door closes. And then</b>      17 <b>that's -- sometime I fired.</b></p> <p>18   Q. Which portion was your jacket stuck in the      19 door?</p> <p>20   <b>A. Left side.</b></p> <p>21   Q. No. At which portion of the video? I'm      22 sorry.</p> <p>23   <b>A. I guess other frame of the -- other frame of</b>      24 <b>the camera.</b></p> <p>25   Q. So between, again, those two points when we</p>

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1	can see that you're not in contact with the car -- let		
2	me play again -- 1935 -- 19:30:35 -- I'm sorry -- to		
3	19:30:39 -- at some point during those four seconds,		
4	your jacket was stuck in the car?		
5	<b>A. Yes.</b>		
6	Q. Was it also during those four seconds that		
7	your foot was run over?		
8	<b>A. Yes.</b>		
9	Q. At which point in the video did you fire the		
10	gun?		
11	<b>A. I know -- I can't tell you exactly on the</b>		
12	<b>video, but when he was making the turn.</b>		
13	Q. Okay. Let me play it again.		
14	(Off-the-record discussion.)		
15	<b>BY MR. FREDRICKSON:</b>		
16	Q. Okay. I'll play from 1930 and 24 seconds.		
17	Tell me when to pause the video when you fired the		
18	gun, please.		
19	(Video played.)		
20	<b>A. When I get in contact with the -- with the</b>		
21	<b>car again, I'm not sure -- I can't tell you exactly</b>		
22	<b>when, but it's during that time when he was making</b>		
23	<b>that turn.</b>		
24	<b>BY MR. FREDRICKSON:</b>		
25	Q. Okay. So it's also between 19:30:35 seconds		
	Page 98		Page 100
1	and 19:30:39 seconds on this --		
2	MS. BENSON: Object to --		
3	<b>BY MR. FREDRICKSON:</b>		
4	Q. -- video time stamp?		
5	<b>A. I guess. Whatever time says.</b>		
6	Q. Hang on. So at this point when we can see		
7	you running after the car at 1930 and 35 seconds, you		
8	had not fired yet?		
9	<b>A. No.</b>		
10	Q. Okay. Okay. And -- oops. Sorry. Okay.		
11	And at this point, 1930 and 39 seconds, you had		
12	already fired?		
13	<b>A. Yes.</b>		
14	Q. Based on this video, wouldn't that mean that		
15	you fired while in the Shell parking lot?		
16	<b>A. I don't know where the car was. I know it</b>		
17	<b>was making a turn -- during the process of making a</b>		
18	<b>turn.</b>		
19	Q. Does this video show you falling at all?		
20	<b>A. No.</b>		
21	Q. You testified earlier that you did fall		
22	after the car ran over your foot; right?		
23	MS. BENSON: Object to form.		
24	<b>A. Yes.</b>		
25			

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<p style="text-align: right;">Page 101</p> <p>1     <b>A. I said I can't -- I can't give a specific</b>  2 <b>time frame. It was stressful. Seemed like forever.</b>  3 <b>I can't -- I can't give you a time -- a time stamp on</b>  4 <b>it.</b></p> <p>5     Q. Was it a full minute or a few seconds?</p> <p>6     <b>A. I don't know.</b></p> <p>7     Q. So I want to make sure I'm clear. We've  8 established that we can see you not in contact with  9 the car at 1930 and 35 seconds and then again at  10 1930 and 39 seconds; right?</p> <p>11    <b>A. Yes.</b></p> <p>12    Q. And so it's your testimony that during those  13 four seconds you struggled with the driver of the car,  14 the door closed on your suit, your foot was run over,  15 you drew your gun, fired twice, the jacket came free,  16 all in those four seconds?</p> <p>17    MS. BENSON: So I'm going to object to form  18 as compound as well. And he hasn't testified to the  19 time stamp on the -- on the video.</p> <p>20    MR. FREDRICKSON: Well, he just did.</p> <p>21 BY MR. FREDRICKSON:</p> <p>22    Q. Do -- did you understand the question?</p> <p>23    <b>A. Yes.</b></p> <p>24    Q. Four seconds elapsed between the points at  25 which we can clearly see that you're not in contact</p>	<p style="text-align: right;">Page 103</p> <p>1 those four seconds in which you struggled with  2 D'Ettrick, the door closed on your suit, your foot was  3 run over, you drew your gun and fired twice, and then  4 your suit came free from the door?</p> <p>5     <b>A. Yes.</b></p> <p>6     Q. Okay.</p> <p>7        MR. FREDRICKSON: Do you want to go off the  8 record for a minute.</p> <p>9        MR. HARMAN: Off the record just a second.</p> <p>10      VIDEOGRAPHER: Going off the record at  11 1:36 p.m.</p> <p>12      (OFF THE RECORD)</p> <p>13      VIDEOGRAPHER: We are back on the record at  14 1:38 p.m.</p> <p>15 BY MR. FREDRICKSON:</p> <p>16    Q. Okay. I want to do this another way just to  17 clarify. If we look at the point in the video in  18 which the time stamp says 1930 and 35 seconds, the  19 video file is at 3 minutes and 39 seconds.</p> <p>20    Do you see that?</p> <p>21    <b>A. Yes.</b></p> <p>22    Q. Okay. And if we move to the second point at  23 which we can see you, which is at 1930 and 39 seconds,  24 the video file is at 3 minutes and 44 seconds;  25 correct?</p>
<p style="text-align: right;">Page 102</p> <p>1 with the vehicle; right?</p> <p>2    MS. BENSON: I'm going to object to form to  3 the extent --</p> <p>4    MR. FREDRICKSON: That's fine.</p> <p>5    MS. BENSON: -- that you're --</p> <p>6    MR. FREDRICKSON: Your objection is noted.</p> <p>7    MS. BENSON: -- asking him to authenticate  8 the time stamp.</p> <p>9 BY MR. FREDRICKSON:</p> <p>10   Q. During the four seconds in this video in  11 which we can see that you're not in contact with the  12 car --</p> <p>13   <b>A. Play the video again.</b></p> <p>14   Q. Yeah. Okay. Here we are at 1930 and  15 35 seconds, and we see you running after the car;  16 true?</p> <p>17   I'm sorry. Can you answer audibly?</p> <p>18   <b>A. Say that again.</b></p> <p>19   Q. At 1930 and 35 seconds we can see that  20 you're not in contact with the car.</p> <p>21   <b>A. Yes.</b></p> <p>22   Q. Okay. And again at 1930 and 39 seconds we  23 can see that you're not in contact with the car.</p> <p>24   <b>A. Yes.</b></p> <p>25   Q. So it's your testimony that it's during</p>	<p style="text-align: right;">Page 104</p> <p>1     <b>A. Yes.</b></p> <p>2     Q. Okay. So three or four seconds elapsed  3 during those two points.</p> <p>4        MR. CUNNINGHAM: Object to the form of the  5 question.</p> <p>6        MS. BENSON: Same.</p> <p>7 BY MR. FREDRICKSON:</p> <p>8        Q. Three seconds elapsed during those two  9 points; true?</p> <p>10      MR. CUNNINGHAM: Same objection.</p> <p>11      <b>A. Either three or four. I mean ...</b></p> <p>12 BY MR. FREDRICKSON:</p> <p>13        Q. Yeah. Which do you think it is?</p> <p>14        MS. BENSON: Object to form.</p> <p>15      <b>A. I think it's four.</b></p> <p>16 BY MR. FREDRICKSON:</p> <p>17        Q. You think it's four? I just didn't hear.  18 Did you say you think it's --</p> <p>19      <b>A. Yes.</b></p> <p>20        Q. -- four seconds? Thank you.</p> <p>21        Do you agree with me that if you fire the  22 gun between these two points that we've discussed,  23 1930 and 35 seconds and 1930 and 39 seconds, the shell  24 casings would not be in the street where they're shown  25 in Exhibit 12?</p>

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Oliver Simmonds

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<p style="text-align: right;">Page 137</p> <p><sup>1</sup> generally as to financial condition, which I don't  <sup>2</sup> believe is inadmissible, but I'm just putting the  <sup>3</sup> objection on the record.</p> <p><b>4 A. -- Bank of America.</b></p> <p><b>5 BY MR. FREDRICKSON:</b></p> <p><b>6 Q. Bank of America.</b></p> <p><b>7 What about a savings account?</b></p> <p><b>8 A. No. Yeah. No, no saving. I got another</b>  <b>9 checking with iTHINK Financial Credit Union.</b></p> <p><b>10 Q. Okay. So you have two checking accounts?</b></p> <p><b>11 A. Three.</b></p> <p><b>12 Q. Three. Where is the third one?</b></p> <p><b>13 A. iTHINK Financial.</b></p> <p><b>14 Q. You have two at --</b></p> <p><b>15 A. I gave you Truist, Bank of America, iTHINK</b>  <b>16 Financial.</b></p> <p><b>17 Q. Okay. Thank you. One at Truist, one at</b>  <b>18 Bank of America --</b></p> <p><b>19 A. Yes.</b></p> <p><b>20 Q. -- and one at Icon Financial?</b></p> <p><b>21 A. Yeah. iTHINK Financial.</b></p> <p><b>22 Q. Okay. No savings account you said?</b></p> <p><b>23 A. No.</b></p> <p><b>24 Q. Do you have a retirement account?</b></p> <p><b>25 A. No.</b></p>	<p style="text-align: right;">Page 139</p> <p><b>1 Q. When you were pumping the gas, which</b>  <b>2 direction were you facing?</b></p> <p><b>3 A. I can't recall.</b></p> <p><b>4 Q. You don't know whether you were facing</b>  <b>5 towards the front or the rear of the vehicle?</b></p> <p><b>6 A. Maybe the rear.</b></p> <p><b>7 Q. And were you at the gas cap where you were</b>  <b>8 fueling the entire time during this -- preceding this</b>  <b>9 incident?</b></p> <p><b>10 A. I can't remember.</b></p> <p><b>11 Q. Which side did D'Ettrick get in the vehicle?</b></p> <p><b>12 A. I don't know.</b></p> <p><b>13 Q. You didn't see him get in initially?</b></p> <p><b>14 A. No.</b></p> <p><b>15 MR. FREDRICKSON: Okay. That's all I have.</b></p> <p><b>16 MR. CUNNINGHAM: All right. I've got some</b>  <b>17 follow-up questions.</b></p> <p><b>18 (Off-the-record discussion.)</b></p> <p style="text-align: center;"><b>EXAMINATION</b></p> <p><b>20 BY MR. CUNNINGHAM:</b></p> <p><b>21 Q. All right. Good afternoon. This is Pearson</b>  <b>22 Cunningham. Officer Simmonds, I've just got some</b>  <b>23 follow-up questions.</b></p> <p><b>24 Earlier today -- it was early this</b>  <b>25 morning -- we were talking about some of your training</b></p>
<p style="text-align: right;">Page 138</p> <p><b>1 Q. Do you have any other financial accounts,</b>  <b>2 investment account?</b></p> <p><b>3 A. No.</b></p> <p><b>4 Q. Stock trading?</b></p> <p><b>5 A. No.</b></p> <p><b>6 Q. Cryptocurrency?</b></p> <p><b>7 A. No.</b></p> <p><b>8 Q. What is your current rate of pay from APD?</b></p> <p><b>9 A. I think it's 72,000 annually.</b></p> <p><b>10 MR. FREDRICKSON: Let's go off the record</b>  <b>11 for a minute.</b></p> <p><b>12 VIDEOGRAPHER: Going off the record at</b>  <b>13 3:13 p.m.</b></p> <p><b>14 (OFF THE RECORD)</b></p> <p><b>15 VIDEOGRAPHER: We're back on the record at</b>  <b>16 3:16 p.m.</b></p> <p><b>17 BY MR. FREDRICKSON:</b></p> <p><b>18 Q. Officer Simmonds, on -- in the time around</b>  <b>19 this incident on January 15, 2019, when you went to</b>  <b>20 this Shell gas station at Whitehall and McDaniel, did</b>  <b>21 you ever go inside the gas station?</b></p> <p><b>22 A. No.</b></p> <p><b>23 Q. The gas cap for the vehicle was on the</b>  <b>24 passenger side; correct?</b></p> <p><b>25 A. Yes.</b></p>	<p style="text-align: right;">Page 140</p> <p><b>1 as a police officer and some of your employment too,</b>  <b>2 and I believe -- did I -- did I hear you correctly</b>  <b>3 that you -- did you say that, while you were living in</b>  <b>4 Jamaica, you served as a police officer in Jamaica?</b></p> <p><b>5 A. Yes, sir.</b></p> <p><b>6 Q. Prior to serving as a police officer in</b>  <b>7 Jamaica, was there a training program that you went</b>  <b>8 through to become a police officer in Jamaica?</b></p> <p><b>9 A. Yes.</b></p> <p><b>10 Q. Once you started -- you know, prior to</b>  <b>11 working for APD, did you attend POST, POST training?</b></p> <p><b>12 A. Yes, sir.</b></p> <p><b>13 Q. And then it's my understanding -- correct me</b>  <b>14 if I'm wrong -- when we were looking at your POST</b>  <b>15 profile, there was POST training, and then is there</b>  <b>16 some additional training that APD required of you</b>  <b>17 before you got into the patrol capacity?</b></p> <p><b>18 A. Yes, sir.</b></p> <p><b>19 Q. Okay. And then we looked through that -- I</b>  <b>20 think it was that exhibit, and there was continuing</b>  <b>21 classes you would take on a year-to-year basis; is</b>  <b>22 that right?</b></p> <p><b>23 A. Yes, sir.</b></p> <p><b>24 MR. CUNNINGHAM: All right. What exhibit</b>  <b>25 are we on?</b></p>